

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GIUSEPPE D'ALESSANDRO,

Petitioner,

v.

ORDER
08-CV-914

MICHAEL B. MUKASEY, et al.,

Respondents.

This case was referred to Magistrate Judge Victor E. Bianchini, pursuant to 28 U.S.C. § 636(b)(1). On December 15, 2008, petitioner filed a petition for a writ of habeas corpus. On March 25, 2009, Magistrate Judge Bianchini filed a Report and Recommendation, recommending that petitioner's petition be granted and that a writ of habeas corpus issue directing his release from custody subject to appropriate conditions of supervision of DHS/ICE. On the same day, Magistrate Judge Bianchini issued a separate order requiring petitioner's immediate release on bail pending the outcome of the habeas proceedings. This Court denied a motion by the government for an emergency stay of Magistrate Judge Bianchini's order of immediate release. Petitioner was released from DHS/ICE custody on or around April 2, 2009.

Respondents filed objections to the Report and Recommendation on April 15, 2009 and petitioner filed a response thereto. Oral argument on the objections was held on May 22, 2009.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court adopts the proposed findings of the Report and Recommendation. Additionally, the Court notes that petitioner has been released for approximately eight weeks as of the date of this Order. Over the past eight weeks, according to representations from petitioner's counsel, petitioner has maintained contact with his state parole officers and lived at home with his family without incident. To date, petitioner's conduct since his release further justifies the findings that Magistrate Judge Bianchini made in his Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Bianchini's Report and Recommendation, petitioner's petition is granted. A writ of habeas corpus shall issue directing his continued release from custody subject to appropriate conditions of supervision of DHS/ICE.

The Clerk of Court shall take all steps necessary to close the case.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: May 29 , 2009